

1 KENNETH C. JOHNSTON, ESQ.  
Texas Bar No. 00792608  
2 E-mail: [kjohnston@krcl.com](mailto:kjohnston@krcl.com)  
BRIAN W. CLARK, ESQ.  
3 Texas Bar No. 24032075  
E-mail: [bclark@krcl.com](mailto:bclark@krcl.com)  
4 DAVID M. CLEM, ESQ.  
Texas Bar No. 24050428  
5 E-mail: [dclem@krcl.com](mailto:dclem@krcl.com)  
KANE RUSSELL COLEMAN & LOGAN PC  
6 3700 Thanksgiving Tower  
1601 Elm Street  
7 Dallas, Texas 75201  
Telephone: 214/777-4200  
8 Facsimile: 214/777-4299

9 F. THOMAS EDWARDS, ESQ.  
Nevada Bar No. 9549  
10 E-mail: [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
SARAH T. BASSETT, ESQ.  
11 Nevada Bar No. 12326  
E-mail: [sbassett@nevadafirm.com](mailto:sbassett@nevadafirm.com)  
12 HOLLEY, DRIGGS, WALCH,  
PUZEY & THOMPSON  
13 400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
14 Telephone: 702/791-0308  
Facsimile: 702/791-1912

15 *Attorneys for Plaintiff*  
16 *Blue Acquisition Member, LLC*

17  
18 UNITED STATES DISTRICT COURT  
19 DISTRICT OF NEVADA

20 BLUE ACQUISITION MEMBER, LLC,

21 Plaintiff,

22 v.

23 BAILEY PEAVY BAILEY, PLLC,

24 Defendant.

CASE NO.:

ORIGINAL COMPLAINT

25  
26 Blue Acquisition Member, LLC ("Blue"), by assignment from 1410 Houston Tower,  
27 LLC ("1410"), files this Original Complaint against Bailey Peavy Bailey PLLC ("BPB") and in  
28 support thereof would show as follows:

**PARTIES**

1  
2 1. Blue is a limited liability company organized and existing under the laws of the  
3 State of Delaware. Blue consists of a single member, Robert Entler, an individual resident of the  
4 State of Nevada. Accordingly, Blue is a citizen of the State of Nevada.

5 2. BPB is a Texas law firm, formerly known as Bailey Perrin Bailey, PLLC. BPB is  
6 a Texas limited liability company consisting of the following three members:

- 7 a. F. Kenneth Bailey, Jr., an individual resident of the State of Texas;  
8 b. Kenneth Camp Bailey, an individual resident of the State of Texas; and  
9 c. William Harrison Junell, an individual resident of the State of Texas.

10 Accordingly, BPB is a citizen of the State of Texas.

11 **JURISDICTION & VENUE**

12 3. This Court has personal jurisdiction over BPB because BPB has systematically  
13 and purposefully availed itself of the benefits and protections of the laws of the State of Nevada.  
14 Specifically, BPB's principals have made numerous trips to Nevada and regularly communicated  
15 with the Nevada-based principals of 1410 for business purposes.

16 4. This Court has subject matter jurisdiction over this action pursuant to 28 USC §  
17 1332(a). Complete diversity exists between Blue on the one hand and BPB on the other hand.  
18 The amount in controversy exceeds \$75,000, exclusive of interest and costs.

19 5. Venue is appropriate in the District of Nevada pursuant to 28 USC § 1391(b)(2)  
20 because a substantial portion of the events giving rise to this cause of action occurred in this  
21 District.

22 **INTRODUCTION**

23 6. This case arises from BPB's breach of B&B Opportunity Fund, LLC's ("B&B")  
24 operating agreement ("Agreement"). B&B is a Delaware limited liability company of which  
25 BPB is a member.

26 7. BPB defaulted under the terms of the Agreement by failing to make its required  
27 contribution to B&B.

28 ///

## FACTUAL BACKGROUND

11. BPB is a Texas law firm that is involved in mass tort litigation, including transvaginal mesh litigation. In an effort to prosecute these mass tort claims, BPB needed outside funding and took steps to obtain the same.

12. During this process, BPB agreed to pursue further opportunities in both litigation funding and real estate ventures. Accordingly, BPB, along with NCLA, entered into the Agreement, thereby creating B&B under the laws of the State of Delaware in order to accomplish these objectives.

13. Pursuant to the Agreement, BPB made an unconditional promise to contribute \$15,000,000 to B&B. The Agreement specified that B&B would invest \$5,000,000 of BPB's contribution in 1410 in order to fund the Real Estate Transaction.

14. In reliance on BPB's commitment to make its contribution under the Agreement, 1410 advanced \$250,000 in earnest money to secure the Real Estate Transaction. BPB

1 benefitted from 1410's advancement because, had the Real Estate Transaction closed, B&B—  
2 and BPB's interest therein—would have received a credit toward the purchase price of the real  
3 estate. Accordingly, 1410 became BPB's creditor.

4 15. Additionally, in reliance on BPB's pledge to make its contribution under the  
5 Agreement, 1410 borrowed millions of dollars that it placed in escrow in anticipation of closing  
6 the Real Estate Transaction. Each day that the funds sat in escrow without closing, 1410's lender  
7 charged 1410 interest. In all, 1410 paid \$490,000 in interest to the lender.

8 16. For several months, the principals of BPB were involved in negotiations with  
9 several lenders in an effort to secure funding to assist with, among other things, making the  
10 contribution to B&B and paying off outstanding debts of BPB. Ultimately, BPB obtained a  
11 \$2,000,000 "bridge loan" through these negotiations that, upon information and belief, BPB  
12 used, in part, to service its debts. Upon obtaining the litigation financing that BPB needed, BPB  
13 refused to close any further loans related to real estate financing and failed to make its required  
14 contribution to B&B.

15 17. BPB's breach of the Agreement meant that the Real Estate Transaction could not  
16 close; thereby causing 1410 to lose the \$250,000 in earnest money and needlessly incur interest  
17 charges on the escrow funds. Because 1410 extended credit in reliance on BPB's unconditional  
18 pledge to make its contribution to B&B, BPB remains indebted to 1410 for the lost funds.

19 18. On November 18, 2014, 1410 assigned its claim against BPB to Blue as  
20 repayment for legal fees paid by Blue on behalf of 1410 after 1410 was sued by the seller in the  
21 Real Estate Transaction.

## 22 CLAIMS

### 23 *Count One: Breach of the Agreement*

24 19. Blue repeats and realleges each and every allegation as set forth above and hereby  
25 incorporates the same as if set forth fully herein.

26 20. The Agreement is a valid and enforceable contract between BPB and NCLA.

27 21. BPB breached its obligations under the Agreement by failing to pay to make its  
28 required contribution.



1           22.    As a result of BPB's breach of the Agreement, 1410 lost the \$250,000 credit it  
2 extended on behalf of B&B, and thereby BPB.

3           23.    Pursuant to 6 Del. C. § 18-502(b), BPB is liable to 1410 because 1410 extended  
4 credit on B&B's behalf in reliance on BPB's unconditional pledge to make its contribution.

5                                   ***Count Two: Promissory Estoppel***

6           24.    Blue repeats and realleges each and every allegation as set forth above and hereby  
7 incorporates the same as if set forth fully herein.

8           25.    BPB unconditionally promised to contribute \$15,000,000 to B&B.

9           26.    BPB reasonably expected its promise to induce 1410 to extend credit on behalf of  
10 B&B.

11           27.    1410 reasonably and detrimentally relied on BPB's promise and extended the  
12 \$250,000 credit and the \$490,000 in interest paid to the lender.

13           28.    BPB's promise is binding because injustice can be avoided only by enforcement  
14 of the promise.

15                                   ***Count Three: Equitable Estoppel***

16           29.    Blue repeats and realleges each and every allegation as set forth above and hereby  
17 incorporates the same as if set forth fully herein.

18           30.    BPB induced 1410 to detrimentally rely on BPB's promise to contribute to B&B.

19           31.    1410 lacked knowledge or the means of obtaining knowledge of the truth of the  
20 facts in question.

21           32.    1410 relied on BPB's promise.

22           33.    1410 lost the \$250,000 credit it extended and the \$490,000 in interest paid to the  
23 lender as a result of its reliance.

24    ///

25    ///

26    ///

27    ///

28    ///

**CONCLUSION & PRAYER**

34. For these reasons, Plaintiff Blue Acquisition Member, LLC, asks that the Court enter judgment against Defendant Bailey Peavy Bailey, PLLC, as follows:

- a. Actual liquidated damages in the amount of at least \$740,000, plus such other damages as may be proven at trial;
- b. Costs of court;
- c. Pre and post-judgment interest as allowed by law;
- d. Reasonable and necessary attorneys' fees; and
- e. Such other and further relief to which Plaintiff may be entitled.

DATED this 3<sup>rd</sup> day of December, 2014.

HOLLEY, DRIGGS, WALCH,  
PUZEY & THOMPSON



F. THOMAS EDWARDS, ESQ.  
Nevada Bar No. 9549  
SARAH T. BASSETT, ESQ.  
Nevada Bar No. 12326  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

KENNETH C. JOHNSTON, ESQ.  
Texas Bar No. 00792608  
BRIAN W. CLARK, ESQ.  
Texas Bar No. 24032075  
DAVID M. CLEM, ESQ.  
Texas Bar No. 24050428  
KANE RUSSELL COLEMAN & LOGAN PC  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

*Attorneys for Plaintiff  
Blue Acquisition Member, LLC*